CompTel recognizes, however, that the magnitude of non-cost amounts embedded in existing switched access revenues is enormous, and that a "flash cut" of access rates to TSLRIC may be considered infeasible. It is therefore necessary to establish priorities and concentrate initially upon prescribing TSLRIC-based rates for those access charges that are least subject to market discipline. This conclusion is consistent with the approach taken by the Commission in its *Competition Order*: in that Order, the Commission adopted a "reverse-Ramsey pricing" method for allocating ILEC common costs among local services. Specifically, the Commission concluded that a reasonable method of allocating ILEC common costs:

> would allocate only a relatively small share of common costs to certain critical network elements, such as the local loop and collocation, that are most difficult for entrants to replicate promptly (*i.e.*, bottleneck facilities). Allocation of common costs on this basis ensures that the prices of network elements that are least likely to be subject to competition are not artificially inflated by a large allocation of common costs."[29]

CompTel's proposal would apply precisely the same logic to the process of bringing access charges to economic cost. By immediately prescribing TSLRIC rates for those access elements that are the least subject to competitive market forces, while maintaining access rate elements that may be subject to competitive pressure at current levels for the present, the Commission would establish a prescriptive pricing methodology that takes a major step toward establishing cost-based access rates while minimizing the ILECs' ability to disadvantage entrants by imposing uneconomic costs on them.

CompTel cautions the Commission that, above all, it must not establish a TIC-like "slush fund" that fails to distinguish between ILEC TSLRIC, embedded costs, and recovery of

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[29] *Id.*, at ¶ 696.

historic earnings levels. Permitting ILECs to charge rates that include such vague and unquantifiable amounts have caused the pricing distortions and cross-subsidies that have plagued ILEC access charges since their inception. The Commission must seize this opportunity to exorcise such non-cost amounts from access charges. Failure to do so would be catastrophic. It would send the wrong economic signals to the market, would inhibit efficient network design by both ILECs and competitive carriers, and would allow ILECs to shift costs among classes of customers to anticompetitive effect.

B. Terminating Access Charges: Carrier Common Line, Local Switching and Transport Interconnection Charge

The Carrier Common Line ("CCL"), Local Switching and Transport Interconnection Charge ("TIC") rates on the terminating side of a call should be prioritized as the first switched access rate elements to be brought to TSLRIC levels, and the Commission should prescribe TSLRIC rates for these services immediately. Three considerations compel this approach.

First, as discussed in Section III above, the terminating CCL, local switching and TIC are not subject to competitive pressures, and will not become subject to competitive pressures even after competitive carriers enter the local market using unbundled ILEC network elements. The provider of terminating access -- whether the ILEC or a competitor -- has no direct relationship with the party that pays for the call. Rather, the calling party chooses its long distance carrier, but that relationship does not provide any incentive for the terminating access provider to lower its charges to the originating long distance carriers. Given that there is no incentive for reductions in these access charges, a prescriptive approach is necessary to bring these rates to TSLRIC-based levels.

Second, as a general matter, access charges must reflect the functions that are being provided by the ILEC, and services that provide identical functions must be priced

identically. This outcome is not only necessary to prevent unreasonable discrimination among purchasers of ILEC access services, it is entailed by TSLRIC because the same function has the same costs. Specifically, ILEC services that provide identical functions must be priced at identical TSLRIC rates, regardless of the label of the traffic (i.e., local or toll). Absent such pricing, competitive carriers would not be able to design their networks and develop their services efficiently in response to market signals. Rather, they would be compelled to mirror the ILECs' network designs and to define their local calling areas identically to the ILECs, even if such decisions would otherwise be inefficient or inconsistent with customers' preferences.

Third, as incumbent local service providers, the ILECs will continue to be the local service provider for the vast majority of customers, thereby ensuring their domination of the market for terminating access for the foreseeable future. Eliminating non-TSLRIC distortions in terminating access charges will lessen the advantages that ILECs derive by virtue of their incumbency, and will lessen barriers to competitive entry.

In these comments, CompTel recommends specific changes to the terminating CCL, Local Switching, and TIC rates. In the *Competition Order*, the Commission has found that there are *no* incremental costs associated with terminating loops.[30] Because the TSLRIC of the terminating CCL is zero, the Commission should eliminate the terminating CCL as a rate element.[31]

Regarding Local Switching, the Commission must ensure that the terminating Local Switching rates are set at the same levels that are established for the termination of local

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30 *Competition Order*, 11 FCC Rcd. 15499.

31 CompTel wishes to make clear that it would strongly oppose any effort by the ILECs to recover the revenues they receive today from terminating CCL charges from originating CCL rates in the future.

traffic pursuant to Section 251(b)(5) of the 1996 Act. This outcome is compelled by several considerations. The first can be summarized as "a minute is a minute" -- that is, the function performed, and the costs incurred, in switching a minute of traffic in the ILEC end office is the same whether the traffic is local or toll. The Local Switching function in the access regime is therefore identical to the switching component of the unbundled Termination function identified by the Commission for purposes of interconnection under Section 251(b)(5) of the 1996 Act.[32] Indeed, the Commission anticipated this conclusion in its *Competition Order*, where it stated that: "[u]ltimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge."[33] Because the Local Switching and Termination rate elements reflect the same functions, they have the same TSLRIC and must be priced identically. The Commission should therefore require ILECs to set their rates for Local Switching at the same level that state regulatory commissions establish for the termination of local traffic.[34]

The terminating TIC should be set at zero. By definition, the TIC is not associated with a discrete exchange access function. Under a TSLRIC regime, the ILECs will

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32 *Competiton Order*, at ¶ 1040.

33 *Id.* at ¶ 1033.

34 CompTel notes that, since the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules for interconnection under Section 251 and 252 of the 1996 Act, state regulators are no longer bound to adopt the TELRIC costing methodology established by the Commission. It is therefore possible that a state regulatory body could adopt a methodology for establishing local termination rates that results in non-cost based rates. If such rates are developed in any state, CompTel would urge the Commission to take whatever additional action may be necessary to establish cost-based Local Switching rates.

recover all TSLRIC costs through other access rate elements and the terminating TIC must be reduced to zero.[35]

C. Interoffice Transport

As discussed in Section III, above, Tandem Switching and Tandem-Switched Transport are not intrinsically tied to the originating or terminating loop, and so there is no reason to differentiate between originating and terminating access charges for these functions. Because competitive carriers must today purchase these functions from ILECs and have no realistic alternatives for these functions, the Commission must immediately prescribe TSLRIC-based rates for these access rate elements. The Commission has already required TELRIC-based rates for tandem switching and tandem-switched transport in the *Competition Order*, and it should require ILECs to use those rates when providing tandem switching and tandem-switched transport as switched access services.

Because there is some competition today for dedicated transport, Direct-Trunked Transport should be accorded the same treatment as the originating access services discussed in subsection D below. While it is important that all access elements be brought to TSLRIC-based levels, CompTel recognizes that it is necessary to prioritize among the services for which TSLRIC-based rates will be prescribed immediately. The Commission should therefore monitor movements in Direct-Trunked Transport rates and should reserve the right to take prescriptive action in the future if market forces are not adequate to drive these rates to cost-based levels.

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35 In its brief filed in the 8th Circuit appeal of the *Competition Order*, the Commission acknowledged that the TIC is not a cost-based charge. The Commission stated that the TIC (and the CCL) "do not correspond with the costs of particular facilities that will be reflected in charges for Section 251(c)(3) elements." Brief for Respondent FCC, filed in *Iowa Utilities Board v. F.C.C.*, No. 96-3321 and consolidated cases (8th Cir., Dec. 16, 1996) at 9.

D. Originating Access Charges: Carrier Common Line, Local Switching and Transport Interconnection Charge

As noted in Section IV(A), the Commission may consider the magnitude of non-incremental cost amounts embedded in current ILEC access rates to make it infeasible from a practical standpoint to reduce all access charges to TSLRIC-based levels in the near term. For that reason, CompTel agrees that the Commission may wish to retain for now the current rate levels for access rate elements that may be subject to downward pressure as local service competition begins to develop. These rate elements include the originating CCL, Local Switching and TIC charges. As CompTel discusses in Section III above, originating access charges may become subject to some competitive pressure in the future. While this is by no means a guaranteed outcome -- it is possible that competitive providers of originating access will have the same incentives to maintain inflated rates as ILECs -- the Commission and the industry can monitor the development of competition for these functions, and any related rate changes, and can decide that prescriptive action is not warranted if competition brings reductions in originating access rates.

E. Volume and Term Discounts

The NPRM seeks comment on the expansion of the ILECs' ability to establish volume and term-discounted rates for access services.[36] CompTel is concerned that without adequate safeguards, ILECs could use volume and term discounts to provide unreasonably discriminatory preferential treatment to themselves or large carriers at the expense of smaller carriers. Indeed, the Commission has acknowledged its concern that ILECs could use volume

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[36] NPRM at ¶¶ 187-91.

and term discounts to anticompetitive effect if they were accorded this level of pricing flexibility prematurely.[37] As with other access charges, volume and term discounts should not be established unless the ILEC demonstrates that the discount levels reflect TSLRIC costs. Moreover, the Commission must ensure that ILECs do not discriminate in the application of these discounts.

In addition, ILECs that establish term discounts for long-term access service contracts must clarify that competitive carriers will be able to resell such services without penalty. Under many ILEC tariffs, premature termination of long term contracts can result in significant termination liability penalties -- frequently payment of 90% or 100% of the entire contract price regardless of when service is terminated. Recently, questions have arisen as to whether these termination liability charges apply when a competitive carrier providing local service via service resale under Section 251(c)(4) of the Act wishes to convert an existing ILEC customer with a long-term contract to its customer. Some ILECs have taken the position that a customer that wishes to switch from an ILEC long term contract to ILEC service resold by a competitive carrier is terminating its long term contract, which triggers the termination liability penalty. If an ILEC is able to apply termination liability charges in such instances, it will, of course, effectively preclude customers from switching to resellers, and will construct an absolute barrier to that form of competition. The Commission should therefore clarify that, to the extent that ILECs are accorded expanded ability to establish term discounts, their term discounted arrangements are fully subject to the resale requirements of the 1996 Act.

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[37] NPRM at ¶ 191.

V. PROPOSED RATE STRUCTURE MODIFICATIONS
(Response to § III: Rate Structure Modifications)

A. Transport (Response to § III(D))

The Commission does not reach any tentative conclusions regarding changes to the existing rate structure for switched transport, but seeks comments on several proposals: (1) retain the current interim structure, which offers carriers a choice of a single usage-based rate for transport and switching between a serving wire center ("SWC") and end office ("EO") (the "unitary" rate option), or a combination of a flat-rated charge for the tandem-SWC transport and a usage charge for the tandem-EO link (the "partitioned" rate option); (2) eliminate the current unitary rate option, and require all carriers to purchase the SWC-tandem circuit on a flat-rated basis; (3) establish a peak/off-peak rating system for interoffice transport.[38] As CompTel discusses below, retention of the existing transport rate structure -- which allows carriers the choice between a unitary or partitioned rate structure -- is compelled by the 1996 Act, the Commission's TSLRIC pricing rules, and by economic and policy considerations. CompTel also shows that peak/off-peak pricing is impracticable, and should not be adopted.

In addressing the issue of access charge rate structure in general, the Commission correctly voices its preference for rate structures that recover costs in the way costs are incurred.[39] In deciding on the permanent structure for interoffice transport, however, the Commission must not be driven by obsolete concepts of "common" and "dedicated" facilities. In a copper network environment, such terms may have been relevant at one time -- discrete coaxial or twisted pair cables often were dedicated to the exclusive use of a single customer. The interoffice network

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[38] NPRM at ¶¶ 87-91.

[39] NPRM at ¶ 73.

now, however, is virtually entirely fiber and all digital, and the way such facilities are used greatly increases the shared nature of the physical interoffice network.

In the digital fiber network, the description of a circuit as "dedicated" or "common" has nothing to do with the routing of a particular transmission; rather, all interoffice transport facilities are shared. Instead, dedicated and common circuits are distinguished by the way the information is loaded onto the transmission facilities. Data or voice transmissions are broken down into bits of information that are loaded onto different channels on the transmission facility on a cyclical basis. When a dedicated circuit is multiplexed onto an interoffice transmission facility -- whether at a SWC, EO or tandem -- the information transmitted is given a consistent time assignment on a given channel; in contrast, a non-dedicated or common transmission may be multiplexed and transmitted over precisely the same facilities, but it shares time assignments with other transmissions carried over the same facility.[40] Indeed, the Commission has already recognized that routing of dedicated and common circuits may be interchangeable, stating in CC Docket No. 91-213 that "the physical routing of direct-trunked [dedicated] transport may parallel the routing of tandem-switched [common] transport, passing through the tandem office, or may pass through some other intermediate LEC office."[41]

Because dedicated and common circuits may in fact use identical routing paths, it would be patently unreasonable to eliminate the unitary rate option. If this option were eliminated, carriers that purchased tandem-switched traffic would be forced to pay separate transport rate elements based on the mileage from the SWC to the tandem and from the tandem

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40 Time-division multiplexing is defined as: "A method of multiplexing in which a common transmission path is shared by a number of channels on a cyclical basis by enabling each channel to use the path exclusively for a short time slot." G. Langley, *Telephony's Dictionary* 318 (1986).

41 *Transport Rate Structure and Pricing*, 7 FCC Rcd 7006, 7020 (1992).

to the EO, and would be denied the ability to pay a single rate based on the mileage from the SWC to EO. In contrast, carriers that purchased direct-trunked circuits would be able to pay a rate based on the mileage between the SWC and the EO, even if their circuit was not in fact routed directly between those two points. Such a rate structure would be inherently discriminatory, in contravention of Section 202(a) of the Communications Act. To cure this unreasonably discriminatory outcome, the Commission would have to restructure direct-trunked transport rates so that they reflect the physical routing of the dedicated circuits. Such a rate structure would, of course, be difficult if not impossible to administer, and so is not a preferred outcome. The need for such action can be obviated, however, simply by retaining the unitary rate structure for tandem switched transport that currently is in place.

The avoidance of discrimination between the rate structures for direct-trunked and tandem-switched transport is critical because such discrimination is tantamount to discrimination between classes of customers. As the U.S. Court of Appeals for the D. C. Circuit has recognized,[42] large carriers are the predominant users of direct-trunked transport, while smaller carriers typically purchase tandem-switched transport. Establishment of discriminatory transport rate structures would effectively permit ILECs to favor one class of transport users over another. The routing of both direct-trunked and tandem-switched circuits is determined by the ILEC's network design, including the number and location of its tandem offices, the placement of its wire centers and the capacity of the transport facilities deployed among these locations. Thus, the routing of any dedicated or common transmission over an ILEC's interoffice network -- and the costs associated with such routing -- are determined by the ILEC's network engineering decisions and are wholly outside the control of the carrier purchasing transport. Indeed,

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[42] E.g., *Competitive Telecommunications Ass'n v. F.C.C.*, 87 F.3d 522, 524 (D.C. Cir. 1996).

CompTel has shown in other Commission proceedings that the network design decisions made by LECs are inefficient from the perspective of entrants and small users, and impose unnecessary costs on the purchasers of tandem-switched transport.[43]

Elimination of the unitary rate structure would result in a rate structure that imposes excessive costs upon smaller carriers. In an environment in which ILECs have increasing incentives to discriminate against new entrants, the discrimination that would result from the elimination of the unitary transport rate structure would be profoundly anticompetitive. Further, the existing structure permits both large and small carriers the option to purchase transport based on mileage measured from the SWC to the EO. As such, it eliminates any discrimination in favor of large carriers and precludes ILECs from favoring themselves. It also avoids inaccurate assumptions regarding the routing patterns of interoffice traffic. The existing structure is therefore consistent with the Communications Act and economic theory, and promotes the Commission's procompetitive policy goals. The unitary rate structure has worked well for over four years, and must be retained.

Finally, the Commission should not consider peak/off-peak pricing alternatives for switched transport. First, application of this pricing structure to access services would not produce the efficient pricing signals that proponents of peak/off-peak pricing anticipate. Currently, less than 15 percent of RBOC interstate traffic is access -- the vast majority of traffic is local. If only access charges are reformed to reflect peak/off-peak pricing structures, such change will leave approximately 90% of ILEC traffic unaffected. Even if the adoption of peak/off-peak rate structures would eliminate uneconomic distortions in ILEC network design

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[43] E.g., Comments of the Competitive Telecommunications Association, filed in CC Docket No. 91-213 on Feb. 1, 1993, at 11 and *passim*. A copy of the CompTel Comments are appended as Attachment B.

and pricing practices, any such changes that are limited to access services would have a de minimis impact on usage patterns and ILEC network design decisions.

Second, it is impossible to define peak and off-peak traffic with any degree of certainty or consistency. Peak traffic hours may change with time zone (business customers in New York may experience a surge at 12:00 Eastern time, when offices in California open for business, while California offices may experience a surge at 2:00 Pacific Time, just before New York offices close); rate zone (rural service tends to peak earlier than urban service); service type (residential and Internet traffic begin to peak at 5:00-6:00 p.m., when business traffic starts to decline); and by class of customer (hotels, hospitals, and payphones all have peak calling times that differ from typical business or residential users). It would be impossible to establish verifiably reasonable rates in the face of these variables. Moreover, even if appropriate rates and rate structures could be devised, the billing systems that would be required for such rate structures would be prohibitively expensive and complex. In its *Competition Order*, the Commission recognized that these variables complicated any peak/off-peak billing structure considerably, and concluded that "there may be administrative difficulties in establishing peak-load pricing schemes that may outweigh the benefits of such schemes."[44]

For the reasons discussed above, the Commission must retain as a permanent rate structure for switched transport the unitary rate structure that is currently in place.

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[44] *Competition Order*, 11 FCC Rcd. 15499 at ¶ 1064.

B. Common Line
(Response to §§ III(B) & V)

CompTel supports the Joint Board's recommendation[45] that the CCL be converted to a flat-rated charge, and recovered on a per-line basis from presubscribed carriers. This structural change is consistent with the Commission's finding in the *Competition Order* that loop costs should be recovered on a flat-rated basis, and that it would be inefficient to do otherwise.[46] Finally, by restating the CCL as a flat rated, per-line element, the Commission would establish a CCL that is similar in structure to the flat-rated charges for unbundled loops established under Section 251(c)(3) of the 1996 Act. Such action would further the Commission's stated goal of bringing rates for similar functions into alignment.[47]

CompTel opposes the application of multiple Subscriber Line Charges ("SLCs") to derived channels for several reasons. First, the application of multiple SLCs would not reflect the way costs of derived channels are incurred. When multiple channels are derived from a single loop, the incremental cost reflects the installation of a multiplexer or other piece of aggregating equipment at some point along the loop. Yet the application of multiple SLCs would, in effect, assume that multiple loops are being provided. This application of the SLC would grossly overstate the actual incremental costs of providing derived channels, and would overcompensate the ILECs.

Second, the installation of equipment to provide derived channels may actually *reduce* the ILECs' loop costs. By placing points of aggregation along the loop (whether

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45 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision (Nov. 7, 1996) at ¶ 11.

46 *Competition Order*, 11 FCC Rcd. 15499 at ¶¶ 789-90.

47 *Id.* at ¶ 1033.

multiplexers or digital loop carriers) the ILEC is able to aggregate traffic from multiple loops and transport it to the end office via a high capacity feeder cable. Because this form of aggregating replaces multiple individual cables running from the customers' premises to the end office, it provides the ILEC with considerable cost savings. In such a case, the SLC charge likely should be reduced, not multiplied.

Finally, multiple SLCs for derived channels could easily be avoided by installing the multiplexer on the customer's premises as customer premises equipment, instead of on the loop as part of the ILEC's outside plant. Such a result could establish an artificial incentive for ILECs to emphasize CPE over network solutions, and so could unintentionally promote inefficient network design.

For all these reasons, the Commission should restructure the SLC as a flat-rated element and should refrain from applying the SLC to derived channels.

C. Local Switching
(Response to §§ III(C) & V)

CompTel supports a bifurcated approach to restructuring Local Switching charges. As CompTel notes in Section IV(B) above, rates for terminating Local Switching must be prescribed at TSLRIC levels immediately. In setting these terminating rates at TSLRIC, it is appropriate to maintain the charge solely as a usage-based element. CompTel agrees with commentors who argue that non-traffic sensitive costs are involved in the Local Switching function, however, those costs are not included in a TSLRIC analysis of usage.

CompTel supports the establishment of both flat-rated and usage-based charges for originating Local Switching. As discussed in Section IV(D) above, CompTel would accept the continued pricing of originating Local Switching at existing rate levels for some time. Because these existing rate levels are by definition set at above-TSLRIC levels, departing from a TSLRIC standard for these rates is acceptable. In establishing a flat-rated element for originating

Local Switching, CompTel supports the recovery of line card costs through a flat rate applied per presubscribed line. Even though such a pricing model is not cost-based, it approximates the way costs are incurred in that the ILEC adds line cards as the carrier adds presubscribed lines.

The Commission has requested comment on the desirability of establishing a separate charge for call setup.[48] CompTel urges the Commission not to adopt such charges at this time. To the best of CompTel's knowledge, no state regulatory body has established separate call setup charges when establishing local switching network element rates. Because, at present, there are simply no grounds on which to base a call setup charge, CompTel opposes such action.

CompTel does not support the establishment of a peak/off-peak pricing structure for Local Switching. As CompTel discusses in Section V(A), above, applying such a rate structure change to access charges, but not on local service rates, would have a de minimis impact on service usage patterns or ILEC network design decisions, and so would not convey the benefits suggested by proponents. In addition, the definition of peak and off-peak periods varies markedly with time zone, rate zone, time of day and class of service, and this number of variables make a peak/off-peak rate structure impracticable.

D. SS7 Signaling
(Response to §§ III(7) & V)

CompTel urges the Commission to make no change in the SS7 Signaling rate structure at this time. The disaggregated rate structure proposed by Ameritech may be appropriate to adopt in the future, but should not be mandated at this time. Under Ameritech's proposed structure, any carrier that does not use the Carrier Access Billing System -- and smaller carriers typically do not -- would have to perform direct metering of transaction capabilities

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[48] *Competition Order*, 11 FCC Rcd. 15499 at ¶¶ 75-76.

application part ("TCAP"), which is used to communicate between service switching points and signal control points. This requirement would place a significant financial and operational burden on smaller carriers at a time when they must adjust to myriad other changes in the way access charges are assessed and collected. The time is therefore not ripe for this additional change.

VI. OTHER ISSUES NOT SPECIFICALLY ADDRESSED IN THE NPRM

A. Nonrecurring charges

CompTel urges the Commission to make clear that nonrecurring charges ("NRCs") for the design, installation or change in point of termination for an access service must be set at TSLRIC. The same policy and economic considerations that compel recurring TSLRIC-based rates for recurring charges are applicable to NRCs. Moreover, as the market for local services becomes competitive, ILEC NRCs for circuit "rollovers" (i.e., the charge that a customer pays for shifting a circuit from an ILEC to a competitive carrier) can constitute a significant barrier to entry if ILECs are permitted to set such rates at non-cost levels.

To date, some CompTel members have been subject to unreasonable NRCs when attempting to rollover circuits to their facilities. Some ILECs have attempted to impose upon rollover customers the same NRCs that they charge for the installation of a new circuit. Such charges are inappropriate because rollovers do not require an ILEC technician to travel to the customer premises, as a new installation does, and because significantly less labor is involved in completing rollovers. Similarly, most ILECs do not differentiate between installations or rollovers that are accomplished electronically, as opposed to manually. With the increasing deployment of digital cross-connect systems and SONET networks, the rerouting of circuits has become much less labor intensive. While rollovers and new installations formerly required a technician to manually disconnect and reconnect circuits, the new technologies often allow ILECs to reroute circuits by making a few entries on a computer terminal at a centralized point in

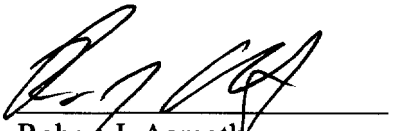
the network. When such routing is performed, it clearly is inappropriate to impose a charge based on technician travel time and labor hours. The Commission should therefore instruct ILECs to establish for all access rate elements separate, cost-justified rates for installation of new circuits, rollovers of existing circuits, and circuit rerouting that is performed electronically as opposed to manually.

VII. CONCLUSION

CompTel respectfully requests that the Commission adopt revisions to ILEC access rate structures and rate levels consistent with the discussion contained herein.

Respectfully submitted,

THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION

By: 

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January 29, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing **"Comments of the Competitive Telecommunications Association"** to be served, via hand delivery, on this 29th day of January, 1997, upon the following persons:

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ATTACHMENT A

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December 13, 1996

Don Russell
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Room 8104 Judiciary Center Bldg.
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Dear Mr. Russell:

On behalf of the Competitive Telecommunications Association ("CompTel"), this letter responds to the Department's request for the views of interested parties on specific issues that may be raised by applications filed by the Bell Companies for authority to enter the in-region interLATA market pursuant to Sections 271-272 of the Telecommunications Act of 1996 ("1996 Act"). See Letter from Joel I. Klein, Acting Assistant Attorney General, to All Interested Parties (Nov. 21, 1996). As the Department knows, CompTel is a national industry association representing competitive telecommunications carriers, with over 200 members including large nationwide carriers as well as scores of smaller regional carriers. Therefore, CompTel's members are directly interested in any applications filed by the Bell Companies to enter the in-region interLATA market, and CompTel plans to be an active participant in such proceedings.

CompTel intends this letter to be a first response to the Department's request for information and assistance regarding its statutory authorization to consult with the FCC regarding the Section 271 applications filed by the Bell Companies. As CompTel obtains additional information and refines its views on the legal, policy and factual issues presented by future Section 271 applications, CompTel anticipates making supplemental submissions to the Department. In submitting this letter, CompTel's primary goal is to assist the Department in what it describes as an effort to develop a "general analytical framework for evaluating Section 271 applications." Rather than provide overlapping answers to the five questions posed by the Department, this letter provides a topical response to the issues raised by the Department.

1. Competitive Conditions in the InterLATA and Local Markets. CompTel agrees with the FCC's holdings in recent proceedings that the interLATA market is robustly competitive. E.g., Motion of AT&T to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995). Accordingly, in a cost-benefit analysis of a Bell Company's Section 271 application, the relatively modest benefits of new interLATA entry will be outweighed by any discernible risk of anticompetitive conduct by the Bell Companies. Similarly, in analyzing the costs and benefits of near term Bell entry, the Department should recognize that the costs to the public from deferring entry into an already competitive market are relatively slight, while the benefits of deferring entry until the local market is competitive are substantial. If a Bell Company files a Section 271 application at a time when the extent and sustainability of local competition is uncertain, it is difficult to foresee any circumstances where the slight benefits of near-term, in-region interLATA entry would outweigh the risks of premature entry.[1]

In contrast to competitive conditions in the interLATA market, there is essentially no measurable local competition on a statewide basis today. (Because in-region interLATA entry will be determined on a state-by-state basis, it is appropriate to examine local market conditions on a statewide basis.)[2] For example, in Illinois, which is at the forefront in developing

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1 It is worth noting that Bell Company entry into the in-region interLATA market will not necessarily increase the interLATA service choices for residential customers. GTE has targeted high-volume business customers for its interLATA offerings on the ground that it would be "inefficient" to address the "mass market." See Communications Daily, Tuesday, Dec. 3, 1996, at p. 1.

2 By focusing upon local competition on a state-wide basis pursuant to Section 271, CompTel does not imply or concede that there is any significant local competition today in any state when measured on a less than state-wide basis.

competitive local markets, unbundled loops comprise less than 0.1% of Ameritech's access lines in the state. Also, local traffic originated on competitive local exchange carrier networks accounts for less than 0.2% of Ameritech's total local minutes in Illinois. Ameritech provides no physical collocations in Illinois, and not even one reseller has accessed the interface to Ameritech's repair and maintenance systems. See Direct Testimony of Joseph Gillan on Behalf of the Competitive Telecommunications Association, CompTel Exhibit 1.0, Illinois Commerce Commission Docket 96-0404, filed Nov. 8, 1996. If, as we believe is the case, in-region, interLATA entry should not occur until local markets are competitive, such entry is not close to being justified in even one state.

2. Incentives. The prospect of in-region interLATA entry is the only significant incentive for the Bell Companies to move expeditiously to create the conditions for, and the reality of, local competition. Once the Bell Companies have obtained authority to enter the in-region interLATA market, they will no longer have any incentives to promote local competition, and they will have strong incentives to undermine local competition and even to destroy the usefulness of the regulatory and market tools that have already been established to promote new local entry. Because the prospect of in-region interLATA entry is the only incentive spurring the Bell Companies to promote local competition, the Department should recommend that there be measurable, actual, effective local competition before the Bell Companies are authorized to enter the in-region interLATA market in the public interest.

In making such a recommendation, the Department should be careful not to assume that the incentive provided by in-region interLATA entry will preclude the Bell Companies from continuing to obstruct local competition. As we show elsewhere in this letter, the Bell Companies continue to obstruct new local entry by every possible means. In addition, the Bell Companies have aggressively litigated extremely narrow interpretations of key provisions in the 1996 Act on a state-by-state basis. While many states reject such transparent attempts to revise the 1996 Act, a few states have accepted such interpretations. As one example, the Public Utilities Commission of Ohio adopted guidelines providing that requesting carriers must be facilities-based in order to purchase network elements and they must pay retail rather than cost-based rates when they purchase a package of

unbundled network elements. See Local Exchange Competition Entry on Rehearing, Case No. 95-845-TP-COI, Public Utilities Commission of Ohio, August 1, 1996. Those guidelines, adopted at the behest of Ameritech, directly contradict the FCC's rules and policies in this area, as well as the plain language of Sections 251(c) and 252(d) of the 1996 Act. If permitted to stand, they will hamper, and perhaps prevent altogether, the development of measurable, actual, effective local competition necessary to justify in-region interLATA entry.

3. **Speed of Entry**. There is no doubt that the Bell Companies can enter the in-region interLATA market within a few months, maybe even weeks, upon receiving authority from the FCC to do so. The Bell Companies' switches already are sized to handle any additional toll traffic that might conceivably be stimulated by new interLATA entry. Moreover, under the guise of building "official" or "administrative" networks, the Bell Companies constructed enormous excess interLATA capacity in their networks (paid for in full by local ratepayers) during the years when they were subject to the Modification of Final Judgment ("MFJ"). See "Testimony of Joseph Gillan on Behalf of the Florida Interexchange Carriers Association," Docket No. 920260-TL, filed Nov. 16, 1992 before Florida Public Service Commission, at pp. 39-44 & Exh. JPG-6 through JPG-9 (noting that 55-90% of active capacity, and between 88-98% of potential capacity, in Southern Bell's "administrative" interLATA network was idle).

During their efforts to modify the MFJ, the Bell Companies liberally conceded that they have the ability to enter the in-region interLATA market quickly and without significant additional investment. As one Bell Company consultant noted, "[c]arrying interLATA traffic would be a way -- at small marginal cost -- [for NYNEX] to use its current network to provide a new facilities-based statewide and regional service . . . [and] NYNEX's participation in the interLATA market would entail no substantial additional costs or investment." See Affidavit of William Taylor at 44, submitted in support of Request of NYNEX Corporation for a Waiver to Provide Interexchange Services in New York, filed Aug. 25, 1994. Therefore, once the FCC authorizes a Bell Company to enter the in-region interLATA market in a state, such entry will occur almost immediately.

Moreover, even if the Bell Companies had not already prepared themselves for in-region interLATA entry, they would be

able to enter the interLATA market quickly and easily upon receiving authority to do so. The interLATA industry is characterized by four nation-wide fiber optic networks (plus numerous regional networks), and the Bell Companies are able to obtain sufficient capacity for their interLATA requirements by negotiating substantial volume discounts on one or more of those backbone networks. Incumbent LECs have already negotiated such discounts for out-of-region interLATA traffic (e.g., GTE-WorldCom deal). As regards in-region interLATA traffic, GTE reports that the major interLATA carriers are competing aggressively against each other for GTE's high-speed data transmission traffic. See "GTE Sees Resale Deals Soon," Reuters Financial Service, Nov. 20, 1996.

By contrast, local entry under Section 251(c) will be time-consuming, gradual, and geographically uneven. Even after the Bell Companies negotiate and establish the network element and wholesale local exchange offerings required by Section 251(c), the time it will take for new carriers to enter the local market on anything resembling a ubiquitous, nationwide basis will be measured in months if not years. Efforts to enter the local market are particularly constrained due to the absence of the operations support systems which are critical to the ability of competitive local exchange carriers to provide efficient local services in head-to-head competition with the Bell Companies.

Further, while competitive conditions in the interLATA market prevent competitors from slowing down the Bell Companies' entry into the in-region interLATA market after grant of their Section 271 applications, the Bell Companies have the ability today -- and they are exercising that ability -- to delay for many months a new carrier's entry into a local market.

-- BellSouth has entered into interconnection agreements with competitive LECs, but then slow-rolled the provisioning and implementation of those agreements, thereby undercutting the new entrant's business plan while trying to force new negotiations.

-- When problems occur during the provisioning or implementation of an agreement, Bell Companies have advised the affected carriers that they lack

the resources to work with the carriers to solve the problems.

-- When new entrants need interconnection agreements to enter the local market, the Bell Companies slow down the negotiation process to take full advantage of the nine-month statutory timetable.

-- In at least one case, U S West reneged on commitments previously accepted by the other party in the middle of negotiations, thereby throwing the negotiations into disarray and putting the parties back closer to square one.[3]

-- In other cases, Bell Companies have "suggested" that the potential new entrant withdraw and then refile its interconnection request just to move back the nine-month statutory deadline; the new entrant feels coerced into accepting that suggestion to avoid souring the negotiations.

As these examples show, it will be many months, if not years, before the Bell Companies lose their current ability to directly affect the entry timetable for new local carriers.

4. Full-Service Offerings. There is consensus in the industry among Bell Companies and competitive carriers alike that

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3 Many incumbent LECs withdrew offers on the table after the U.S. Court of Appeals for the 8th Circuit stayed certain rules adopted by the FCC in its decision on August 8, 1996 in CC Docket No. 96-98. While CompTel does not condone such behavior, it should be noted that some ILECs, such as U S West, have made offers after the stay was entered and then reneged upon those commitments at a later stage in the negotiations.